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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 MICHAEL ALLEN OFSTEDAHL,)
15 Defendants.)
16)
17)

No.:

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy to Commit Insider Trading;
15 U.S.C. §§ 78j and 78ff, and 17 C.F.R.
§ 240.10b-5 – Securities Fraud; 18 U.S.C.
§ 1001 – False Statements to the SEC; 18
U.S.C. § 1505 – Obstruction of Justice; 18
U.S.C. § 1621(1) – Perjury; 18 U.S.C. § 2
– Aiding and Abetting

18 SAN JOSE VENUE
19

20 INDICTMENT

21 The Grand Jury charges:

22 Introduction

23 1. At all times relevant to this Indictment:

24 a. Michael Allen Ofstedahl (“Ofstedahl”) was a vice-president of OEM
25 sales at Adaptec, Inc. (“Adaptec”), a California corporation headquartered in Milpitas,
26 California;

1 b. R.R., an unindicted co-conspirator, was Ofstedahl's dentist, friend,
2 and occasional golfing partner;

3 c. Adaptec was publicly traded on the National Association of
4 Securities Dealers Automated Quotation System market ("NASDAQ"), a national
5 securities market.

6 General Principles Regarding Securities Transactions

7 2. The securities laws prohibit fraudulent activities in connection with the
8 buying or selling of securities, including "insider trading." Insider trading is generally
9 defined as trading a security using material nonpublic information about the company.
10 Federal securities laws also prohibit "insiders" from providing such information to others
11 with the intent to assist those persons in profiting from the inside information. "Insiders"
12 include, but are not limited to, corporate officers, directors, and employees.

13 3. An "option" is an instrument that gives the owner the right to buy or sell a
14 specified number of shares of a specified stock at a certain price within a specified period.
15 A "call" option allows the buyer to buy the underlying stock at any time up to the
16 expiration date of the contract; a "put" option allows the buyer to sell the underlying stock
17 at any time before the contract expires. Option contracts automatically expire on the
18 Saturday following the third Friday of each month; for example, in 1999, "January"
19 options expired on Saturday, January 16, 1999. An option is a security, just like a stock
20 or bond, and is subject to the same regulatory scheme that governs trading in other forms
21 of securities.

22 The Conspiracy and Scheme to Defraud

23 4. The objective of the conspiracy between Ofstedahl and R.R. was to share in
24 the profits R.R. made by trading Adaptec securities based on inside information provided
25 by Ofstedahl. A later objective of the conspiracy was to conceal this agreement and
26 conduct from the Securities and Exchange Commission ("SEC").

1 5. During the final two months of 1998, Ofstedahl offered to provide inside
2 information regarding Adaptec to R.R. in return for a share of the profits R.R. made by
3 trading on the information. R.R. agreed to this arrangement. By late December 1998,
4 outside analysts were publicly predicting that Adaptec's earnings for the quarter ending
5 December 31, 1998, would be approximately 14 cents per share. In fact, as Adaptec's top
6 management knew, its earnings for the quarter were going to be about 25 cents per share.

7 6. Adaptec was originally scheduled to announce its earnings for the previous
8 quarter on January 21, 1999 but, because of the favorable news, Adaptec's management
9 decided to make an earlier announcement of the expected earnings. On January 6, 1999,
10 after the stock market had closed for the day, Adaptec issued a press release stating that
11 its earnings would exceed 20 cents per share.

12 7. On the morning of January 6, 1999, Ofstedahl told R.R. that Adaptec would
13 be "making an announcement" later that day. Ofstedahl told R.R. that he had heard about
14 the impending announcement from someone within the company. Within minutes after
15 this conversation, and before Adaptec issued its press release, R.R. began purchasing
16 large blocks of "January 20" and "January 17 1/2" call options.

17 8. By the end of the day, R.R. had paid a total of \$126,236.82 for 1,100
18 "January 20" and 300 "January 17 1/2" call options. Each option gave R.R. the right to
19 purchase 100 shares of stock at that price. Thus, by purchasing 1,100 Adaptec "January
20 20" call options, R.R. was buying the right to purchase 110,000 shares of Adaptec stock
21 at a guaranteed price of \$20 per share. Similarly, by purchasing 300 "January 17 1/2" call
22 options, R.R. guaranteed himself the right to purchase 30,000 shares of Adaptec stock at
23 \$17.50 per share. Both sets of options expired at the close of trading on Saturday,
24 January 16, 1999.

25 9. On January 7, 1999, the first day of trading after Adaptec announced its
26 favorable earnings estimate, Ofstedahl paged R.R. at 7:46 a.m. to confirm that R.R. had

1 bought shares based on the information Ofstedahl had given him the previous day. That
2 day, Adaptec's stock closed at \$24 7/8 per share, an increase of \$5 5/16, or 27%, from its
3 closing price on January 6, 1999. The value of R.R.'s options rose accordingly. R.R.
4 subsequently sold all of his 1,400 option contracts for a total of \$775,173.35. His net
5 profit from the transactions was \$648,936.53.

6 10. On January 13, 1999, Ofstedahl and R.R. met for breakfast at a coffee shop
7 in Hayward, California. During this meeting, R.R. told Ofstedahl falsely that he had
8 made approximately \$100,000 in profits from his Adaptec trades; the two agreed that
9 Ofstedahl's share of the profits would be \$20,000.

10 R.R. and Ofstedahl Attempt to Cover Up the Conspiracy

11 11. On February 18, 1999, SEC attorneys Craig Martin and Robert Mitchell
12 telephoned R.R. to ask him about his suspicious trading activity on January 6, 1999. R.R.
13 falsely told the SEC attorneys that he had not traded based on inside information and gave
14 several false explanations to explain the timing of his purchases of Adaptec options.

15 12. After speaking with the SEC attorneys on February 18, 1999, R.R. called
16 Ofstedahl. The two met on or about February 20, 1999, at an Embassy Suites hotel in
17 Milpitas to discuss their predicament. R.R. told Ofstedahl that he had denied receiving
18 any inside information regarding Adaptec. During this conversation, Ofstedahl stated that
19 the SEC "had nothing against [him] except a few phone calls."

20 13. On June 29, 1999, Ofstedahl testified under oath before officers of the SEC
21 who were conducting an investigation of R.R.'s trades and made the following false
22 statements, among others, in an attempt to cover up the conspiracy:

- 23 a. that he did not learn of the January 6, 1999, earnings announcement
24 until after it had already been made (Deposition transcript at pp. 46,
25 51, 110-111);
26 b. that, prior to January 6, 1999, he did not know that Adaptec's
earnings for the quarter ended December 31, 1998, would surpass
analysts' expectations (at p. 50);

- c. that he never told any person that Adaptec would make an announcement regarding the third quarter of fiscal 1999 (at p. 96);
- d. that the reason he paged R.R. at 7:46 a.m. on January 7, 1999 was to talk about a future golf engagement (at pp. 115-117); and
- e. that he did not speak to R.R. at all on January 6, 1999 (at p. 106).

COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Insider Trading)

14. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as if fully set forth here.

15. Beginning on or about January 6, 1999 and continuing to on or about June 29, 1999, both dates being approximate and inclusive, in the Northern District of California, and elsewhere, the defendant

MICHAEL ALLEN OFSTEDAHL,

and others, did knowingly and intentionally conspire to commit the offense alleged in Count Two of this Indictment.

Overt Acts Committed in Furtherance of the Conspiracy

16. During the course of the conspiracy, and in order to further the objects thereof, the defendant and his co-conspirators knowingly committed the following overt acts, among others, in the Northern District of California, and elsewhere:

- a. On or about January 6, 1999, at approximately 9:45 a.m., R.R. and Ofstedahl spoke by telephone;
- b. On or about January 6, 1999, at approximately 10:01 a.m., R.R. purchased 200 Adaptec January 17 ½ call options;
- c. On or about January 6, 1999, at approximately 10:04 a.m., R.R. purchased 400 Adaptec January 20 call options;
- d. On the evening of January 6, 1999, after Adaptec had issued its pre-announcement of earnings, Ofstedahl called Adaptec's chief financial officer and expressed surprise at the pre-announcement;
- e. On January 7, 1999, at approximately 7:46 a.m., Ofstedahl paged R.R.;

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- f. On or about January 7, 1999, R.R. sold 400 Adaptec January 20 call options;
- g. On or about January 7, 1999, R.R. sold 200 Adaptec January 17 ½ call options;
- h. On or about January 13, 1999, R.R. and Ofstedahl met for breakfast at a coffee shop in Hayward;
- i. On or about February 20, 1999, R.R. and Ofstedahl met at the Embassy Suites hotel in Milpitas;
- j. On or about June 29, 1999, Ofstedahl testified at a proceeding before Securities and Exchange Commission staff attorneys.

All in violation of Title 18, United States Code, Section 371.

1 COUNT TWO: (15 U.S.C. §§ 78j and 78ff and 17 C.F.R. § 240.10b-5 – Insider Trading;
2 18 U.S.C. § 2 – Aiding and Abetting)

3 17. Paragraphs 1 through 10 of this Indictment are realleged and incorporated
4 as if fully set forth here.

5 18. On or about January 6, 1999, in the Northern District of California, the
6 defendant

7 MICHAEL ALLEN OFSTEDAHL

8 did willfully, directly and indirectly, by the use of means and instrumentalities of
9 interstate commerce and of the facilities of a national securities exchange, use and employ
10 manipulative devices and contrivances in connection with the purchase and sale of
11 securities, namely, options to purchase stock of Adaptec, in contravention of the rules and
12 regulations prescribed by the Securities and Exchange Commission, namely, 17 C.F.R. §
13 240.10b-5, by (a) employing a device, scheme, and artifice to defraud, and (b) engaging
14 in acts, practices, and courses of dealing which would and did operate as a fraud and
15 deceit.

16 19. Specifically, on or about January 6, 1999, in breach of his duty of
17 confidentiality, trust, and loyalty to his employer, Ofstedahl disclosed confidential,
18 material nonpublic information regarding Adaptec's impending earnings announcement
19 to R.R., knowing and intending that he and R.R. would benefit from this disclosure by
20 enabling R.R. to purchase Adaptec shares before Adaptec's pre-announcement of its
21 earnings for the quarter ended December 31, 1998.

22 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title
23 17, Code of Federal Regulations, Section 240.10b-5.

1 COUNT THREE: (18 U.S.C. § 1621 – Perjury)

2 20. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as
3 if fully set forth here.

4 21. On or about June 29, 1999, in the Northern District of California, the
5 defendant

6 MICHAEL ALLEN OFSTEDAHL,

7 having taken an oath before a competent person that he would testify truthfully at an oral
8 proceeding, did willfully and contrary to his oath testify falsely as to a material matter, in
9 that he was specifically asked when he had learned about Adaptec’s pre-announcement of
10 its third quarter earnings and he gave the following testimony:

11 Q: “You were at the office when you learned of the
12 pre-release?”

13 A: “Yes. Well, when I learned of it after it was
14 not a pre-release, it was official. It was after
business close [*sic*] that day.”

15 when in truth, as the defendant well knew, he had learned about the pre-announcement by
16 no later than the morning of January 6, 1999;

17 All in violation of Title 18, United States Code, Section 1621(1).
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1 COUNT FOUR: (18 U.S.C. § 1621 – Perjury)

2 22. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as
3 if fully set forth here.

4 23. On or about June 29, 1999, in the Northern District of California, the
5 defendant

6 MICHAEL ALLEN OFSTEDAHL,

7 having taken an oath before a competent person that he would testify truthfully at an oral
8 proceeding, did willfully and contrary to his oath testify falsely as to a material matter, in
9 that he was asked whether he had ever discussed with R.R. whether R.R. should trade
10 Adaptec securities, and he gave the following testimony:

11 Q: “Did you discuss with [R.R.] at any point in
12 December [1998] whether or not he should
trade Adaptec securities?”

13 A: “No.”

14 Q: “Have you ever discussed that fact with
15 him?”

16 A: “No.”

17 when in truth, as the defendant well knew, he had agreed to provide R.R. with inside
18 information regarding Adaptec in return for a share of R.R.’s trading profits, and had
19 spoken with R.R. on the morning of January 6, 1999, and advised him of Adaptec’s
20 impending earnings announcement;

21 All in violation of Title 18, United States Code, Section 1621(1).
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1 COUNT FIVE: (18 U.S.C. § 1621 – Perjury)

2 24. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as
3 if fully set forth here.

4 25. On or about June 29, 1999, in the Northern District of California, the
5 defendant

6 MICHAEL ALLEN OFSTEDAHL,

7 having taken an oath before a competent person that he would testify truthfully at an oral
8 proceeding, did willfully and contrary to his oath testify falsely as to a material matter, in
9 that he was asked whether he had told anyone about the Adaptec pre-announcement and
10 gave the following testimony:

11 Q: “So you never said that – You never told
12 anybody that a pre-announcement would be
13 made regarding the third quarter of fiscal
14 1999?”

15 A: “It wouldn’t be possible. I didn’t know.”

16 when in truth, as the defendant well knew, he did know about the pre-announcement and
17 had told R.R. about it on the morning of January 6, 1999;

18 All in violation of Title 18, United States Code, Section 1621(1).
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1 COUNT SIX: (18 U.S.C. § 1001 – False Statements to the SEC)

2 26. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as
3 if fully set forth here.

4 27. On or about June 29, 1999, in the Northern District of California, the
5 defendant

6 MICHAEL ALLEN OFSTEDAHL

7 did knowingly and willfully make materially false, fictitious, and fraudulent statements
8 and representations to a staff attorney for the Securities and Exchange Commission in a
9 matter within the jurisdiction of the executive branch of the United States government.

10 28. In particular, during testimony taken in the case entitled In the Matter of
11 Trading in the Securities of Adaptec, Inc., and Puma Technology, Inc., File No. LA-1006,
12 the defendant gave the following answers to the following questions:

13 Q.. Prior to January 6th, 1999, did you tell
14 anyone that Adaptec would pre-announce its
earnings for the third quarter of 1999?

15 A. That has a presumption that I would know,
16 so the answer is no.

17 Q. That presumes that you knew that a pre-
release would be coming, which you did not?

18 A. I think that's what your question implied,
19 that there was a presumption that I would know
20 that to have – to be able to say that to
somebody, and the fact of the matter is that's
not possible.

21 Q: So you never said that, or – You never told
22 anybody that a pre-announcement would be
made regarding the third quarter of fiscal 1999?

23 A: It wouldn't be possible. I didn't know.

24 Ofstedahl's statements were false. In fact, he did know about the pre-announcement and
25 had told R.R. about it on the morning of January 6, 1999;

26 All in violation of Title 18, United States Code, Section 1001.

1 COUNT SEVEN: (18 U.S.C. § 1001 – False Statements to the SEC)

2 29. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as
3 if fully set forth here.

4 30. On or about June 29, 1999, in the Northern District of California, the
5 defendant

6 MICHAEL ALLEN OFSTEDAHL

7 did knowingly and willfully make materially false, fictitious, and fraudulent statements
8 and representations to a staff attorney for the Securities and Exchange Commission in a
9 matter within the jurisdiction of the executive branch of the United States government.

10 31. In particular, during testimony taken in the case entitled In the Matter of
11 Trading in the Securities of Adaptec, Inc., and Puma Technology, Inc., File No. LA-1006,
12 the defendant gave the following answers to the following questions:

13 Q: “Did you discuss with [R.R.] at any point in
14 December [1998] whether or not he should
trade Adaptec securities?”

15 A: “No.”

16 Q: “Have you ever discussed that fact with
17 him?”

18 A: “No.”

19 Ofstedahl’s statements were false. In fact, he had agreed to provide R.R. with inside
20 information regarding Adaptec in return for a share of R.R.’s trading profits and had told
21 R.R. about Adaptec’s impending earnings announcement on the morning of January 6,
22 1999;

23 All in violation of Title 18, United States Code, Section 1001.

1 COUNT EIGHT: (18 U.S.C. § 1001 – False Statements to the SEC)

2 32. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as
3 if fully set forth here.

4 33. On or about June 29, 1999, in the Northern District of California, the
5 defendant

6 MICHAEL ALLEN OFSTEDAHL

7 did knowingly and willfully make materially false, fictitious, and fraudulent statements
8 and representations to a staff attorney for the Securities and Exchange Commission in a
9 matter within the jurisdiction of the executive branch of the United States government.

10 34. In particular, during testimony taken in the case entitled In the Matter of
11 Trading in the Securities of Adaptec, Inc., and Puma Technology, Inc., File No. LA-1006,
12 the defendant gave the following answers to the following question:

13 Q: “You were at the office when you learned of the
14 pre-release?”

15 A: “Yes. Well, when I learned of it after it was
16 not a pre-release, it was official. It was after
business close [*sic*] that day.”

17 Ofstedahl’s answer was false. In fact, he learned of the Adaptec pre-release before it was
18 issued and told R.R. about it on the morning of January 6, 1999;

19 All in violation of Title 18, United States Code, Section 1001.
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1 COUNT NINE: (18 U.S.C. § 1505 – Obstructing a Federal Investigation)

2 35. Paragraphs 1 through 13 of this Indictment are realleged and incorporated as
3 if fully set forth here.

4 36. On or about June 29, 1999, in the Northern District of California, the
5 defendant

6 MICHAEL ALLEN OFSTEDAHL

7 did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and
8 impede the due and proper administration of the law under which a pending proceeding
9 was being had before a department and agency of the United States, in that he gave false
10 and misleading testimony to the Securities and Exchange Commission in the case entitled
11 In the Matter of Trading in the Securities of Adaptec, Inc., and Puma Technology, Inc.,
12 File No. LA-1006, concerning the Commission's investigation of illegal trading in the
13 securities of Adaptec, Inc.

14 37. It was part of defendant's obstruction of this investigation that he gave the
15 false and misleading answers to the Commission staff set forth in counts Three through
16 Eight of this Indictment, which are realleged and incorporated as if fully set forth here.

17 All in violation of Title 18, United States Code, Section 1505.

18 DATED:

A TRUE BILL.

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21 FOREPERSON

22 DAVID W. SHAPIRO
United States Attorney

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24 ELIZABETH DE LA VEGA
Chief, San Jose

25 (Approved as to form: _____)
26 AUSA Callaway

INDICTMENT